CHHOR (3)

IN THE HIGH COURT OF CHHATTISGARH AT BILASPUR

Writ Petition NO. 2840 /2003

PETITIONER : Bhim Sen Patel, aged 44 Years,
S/o Shri Ramdhin Patel
R/o Near Police line Bastar,
Bastar (C.G.)

P. R. No. 2639/03
Presented by Shri Gautam Khetrapal
dated 02.09.03

VERSUS

RESPONDENTS :1. The State of Chhattisgarh
Through Secretary
Department of Home
D.K.S. Bhawan Raipur (C.G.)

2. Director General of Police
Police Head Quarter
Raipur (C.G.)

3. Inspector-General of Police
Bastar, District Bastar (C.G.)

4. Deputy Inspector General of
Police, Bastar, District Bastar (C.G.)

5. Superintendent of Police
Bastar, District Bastar (C.G.)

6. Assistant Superintendent of
Police, Bastar, District Bastar (C.G.)

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R.M. Dubey
Bilaspur (C.G.)
G. 14 13 5-2-03
OF CHHATTISGARH

WRIT PETITION U/A 226/227 OF THE CONSTITUTION OF INDIA FOR ISSUE OF AN APPROPRIATE WRIT IN THE NATURE OF MANDAMUS/CERTIORARI ETC. OR DIRECTION/ORDER IN THE LIKE NATURE ETC.

XI-HC-78

(86)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक ...WP.2840/03 **सन् 200**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

10.10.2006

Shri Gautam Khetrapal, Counsel for the petitioner.

Shri Sushil Dubey, Govt. Advocate for the State/respondents.

Arguments heard.

Order dictated as follows:

ORAL ORDER
(10.10.2006)

SUNIL KUMAR SINHA, J.

The petitioner, who was a Police Constable, has filed this petition challenging the validity of the order dated 23/1/1985 passed by respondent No.5, by which, he was awarded the punishment of dismissal after conducting a detailed domestic enquiry. He has also challenged the validity of the orders passed by respondents No.4, 3 & 1 , which were passed in Departmental Appeals filed by the petitioner.

The brief facts are that on a domestic enquiry, conducted against the petitioner, he was awarded punishment of dismissal on 23/1/1985. The petitioner filed an appeal against the said order before the D.I.G., Bastar. The D.I.G. dismissed his appeal on 16/3/1985 and the Second Appeal filed by the petitioner before the I.G., Bilaspur was also dismissed on 2/8/1985. After the said dismissal, the petitioner filed an Original Application before the State Administrative Tribunal, Jabalpur vide OA No.48/1990.

XI-HC-78

(87)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक ..W.P.-.2840./03 **सन् 200**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश 2	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

Many grounds pertaining to fairness of the enquiry were raised before the Tribunal. The Tribunal dismissed the aforesaid Original Application on 17/1/1990 holding that the enquiry was conducted in all fairness and proper procedure was followed. The Tribunal also held that the finding of the enquiry officer was based on appreciation of evidence and the Supdt. of Police, the Appointing Authority, accepted the said finding. The Tribunal also contended that there was neither any irregularity nor any violation of the principles of natural justice.

It appears that thereafter, the petitioner; perhaps suppressing these facts, filed another appeal before the State Government and the State Government, ultimately, passed the order on 4/8/1997 and dismissed the appeal of the petitioner by rejecting his prayer for re-appointment to the post of Constable in the Police Department. The aforesaid order passed by the concerned Secretary of the Government is placed on record as Annexure P-1.

A perusal of the Writ Petition would show that the petitioner has suppressed the most important fact of filing of the Original Application before the Tribunal and he has straightaway filed the petition challenging the orders passed by the domestic Tribunal as well as the domestic Appellate Authorities and has prayed for quashment of the same. The fact regarding filing of the matter before the State Administrative Tribunal came on record when the State filed a return to the petition filed by the petitioner and the order of the Tribunal was filed as Annexure R-1.

R.I.O.

XI-HC-78

(88)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक ...WP - 284.0/03 **सन् 200**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश 3	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

Learned counsel for the petitioner submits that he was not having knowledge about filing of the matter before the State Administrative Tribunal by the petitioner. He submits that if the factum of suppression of facts is ignored, then, on merits a petition under Article 227 of the Constitution of India would lie to the Division Bench of the High Court, even after passing of the order by the State Administrative Tribunal and in this view of the matter, this petition may be permitted to be withdrawn and the petitioner may be given an opportunity to file a duly constituted petition before the Division Bench of the High Court challenging the validity of the order passed by the Tribunal in O.A. No.48/1990 on 17/1/1990.

On the contrary, learned counsel for the State opposes this prayer. His submission is that the petitioner has not visited the High Court with clean hands and he has suppressed the material facts. He also submits that the order of the State Administrative Tribunal was passed as back as in the year 1990 and if the petitioner is permitted to withdraw this petition with the aforesaid liberty granted in his favour, it shall amount to impliedly condoning the delay in favour of the petitioner for filing a fresh Writ Petition, which the petitioner does not deserve on the face of many suppressions made by him. He prays for straightaway dismissal of the petition.

In the facts and circumstances of this case, in the opinion of this Court, I deem it proper to award one opportunity to the petitioner to approach to the proper forum for agitating the order

P.T.O.

XI-HC-78

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

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मामला क्रमांक ..W.P...2840../03 **सन् 200**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -4-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

passed by the State Administrative Tribunal against him. In consequence, this petition is permitted to be withdrawn with a liberty to the petitioner to file a duly constituted petition against the order passed by the State Administrative Tribunal in OA No.48/1990.

It is made clear that by passing this order, this Court has not condoned the delay, which may come in the way of the petitioner in challenging the order dated 17/1/1990.

Needless to say that the question of delay would be the subject matter of that Court, which will entertain the petition filed by the petitioner and the order passed by that Court would govern the decision of the said point.

With these observations, the petition stands withdrawn with the aforesaid liberty granted in favour of the petitioner.

Sd/-
Sunil Kumar Sinha
Judge

shyna

P.T.O.